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Issue Brief: Native Americans and Minority Religion

Recent Challenges Faced by Native American Minority Religions

Key Words: Native Americans, minority religion, American Indian Religious Freedom Act, Native American religion, religious freedom, First Amendment.

Description: Native Americans have a long history of struggle to gain political recognition of and protection for their religious and ceremonial practices. During the last decade, the latest roadblocks Native American religious minorities have faced surround the use of feathers from the federally protected bald eagle, the possession and use of peyote, and access to sacred sites.

Key Points:

- Native Americans are marginalized as a minority group due to their spiritual beliefs, for their religious practices often conflict with federal regulations.
- Since 1830, the removal of Native Americans from their land has violated communities' freedom to worship by restricting access to sacred sites.
- Furthermore, while the federal government protects the religious use of peyote, local enforcement agencies target its use and subject those in its possession to searches and seizure of the plants.
- Lastly, Native American's use of bald eagle feathers and bones for sacramental purposes continues to be contested by federal wildlife laws that protect the species.

Brief:

The First Amendment guarantees freedom to worship, or not to worship, to all Americans, but the transparency and flexibility of these protections has been challenged throughout the nation's history. A large part of the debate surrounding freedom of religion is marked by the limitation of religious and ceremonial practices of minority belief groups. In particular, Native Americans that practice minority religions have continuously met roadblocks and discrimination. In addition to the myriad of issues Native Americans as a minority group often face Native Americans face, such as housing inequality, educational disadvantage, and health problems like diabetes and obesity, the cultural marginalization that is their reality is perpetuated through their struggle with the legitimization of their religious practices in the eyes of the government.

The enactment of the Indian Removal Act of 1830 and the Dawes Severalty Act 1887, and subsequent displacement of American Indians ultimately pigeonholed these communities to a cycle of detrimental cultural appropriation and socioeconomic inequalities. In regards to religious practices, Native Americans' loss of land and other barriers imposed by the government have restricted their freedom to worship. Firstly, displacement and the removal of property are beyond a housing issue because American Indian religions value spatial relationships as sacred. A place, a land, or an area are more than the physical relationship between the human and the matter, but are actually realms of spirituality. Due to zoning laws, privatization and even protection of areas as meant to be freely and publicly enjoyed by all Americans, Native Americans have faced restricted access to places sacred to their beliefs and crucial to their practice of their religion. Furthermore, environmental concerns have arisen within the Native American communities that demand the federal government to take better care of natural

resources, which have meaning beyond subsistence to American Indian spirituality. Currently, the threat exists that the sacred site of Wounded Knee will be parceled and auctioned off. By selling the land, American Indian's spiritual ties to the site through collective memory are being denied.



Monument erected at the site of the 1890 massacre of hundreds of Lakota men, women and children at Wounded Knee Creek by the U.S. 7th Cavalry. Source: Indian Country Today Media Network.

The need for the protection of Native American minority religions and remedy of past grievances was recognized in 1978 with the American Indian Religious Freedom Act, a federal law protecting and preserving ritual, ceremonies and other cultural practices particular to American Indian religions. Since its passing, the act has been amended, yet legal issues continue to surface. The Native American Graves Protection and Repatriation Act in 1990 and the passing of the Religious Freedom Restoration Act of 1993 are two pieces of legislation passed whose aim is to further protect the worshipping practices of Native American minority religions.

Another way through which Native Americans are marginalized due to their religious practices is through the opposition to the possession and use of important ceremonial items such as the hallucinogen plant peyote. While the religious use of peyote is federally condoned and

protected under the First Amendment, local authorities have subjected those using or possessing the hallucinogen to searches and seizure of their sacramental materials. State authorities claim that it is in their compelling interest to enforce drug laws and thus the use of peyote will be questioned. In fact, the federal government classifies peyote as a Schedule I Controlled Substance, alongside crack and heroin. Until every state legalizes the ceremonial use of peyote, Native Americans will continue to face legal challenges to its sacramental use.



Source: *Plants of the Gods - Their Sacred, Healing and Hallucinogenic Powers* by Richard Evans Schultes and Albert Hoffman. Healing Arts Press (Vermont) 1992

Lastly, within the last five years, Native Americans' use of bald eagle bones and feathers has met legal challenges. Many Native American religions consider eagle feathers as sacred, but the sacramental use of them continues to be contested due to the federal protection of the national bird under the Bald and Golden Eagle Protection Act of 1940. On one end, Native Americans are being kept from their freedom to worship, but the Justice Department argues that exemptions from the statute protecting bald eagles should only be made if the demand for the bird parts does not deplete the nation's supply and therefore does not oppose the nation's interest in preserving the species. In the fall of 2012, the Justice Department released a new policy that

expanded the religious freedom of American Indians. The Justice Department announced that members of federally recognized tribes could possess eagle feathers even though their possession constitutes a federal crime (First Amendment Center 2012). However, they will be prosecuted for killing the birds or buying and selling their feathers or parts. While federal wildlife laws like the Bald and Golden Eagle Protection Act laws criminalizing the killing of bald eagles, and the possession of feathers, bones and bird parts, the First Amendment and other federal laws work to protect Native American tribes' local sovereignty for self-government and freedom to worship. For the future, problems will continue to arise in regards to eagle feathers as American Indians voice their demand for protections under the First Amendment while the population of bald eagles undoubtedly fluctuates.

Overall, federal law and regulations, privatization, and local authorities continue to marginalize Native American minority religions. Therefore, the First Amendment and its protections need to be continuously questioned and issues surrounding freedom to worship need to be addressed.



Eagle Bone Whistle. Source: Wikipedia

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Related Sites:

Possession of Eagle Feathers and Parts by Native Americans -
<http://www.fws.gov/le/pdf/PossessionOfEagleFeathersFactSheet.pdf>

Bureau of Indian Affairs - <http://www.bia.gov>

The National Congress of American Indians - <http://www.ncai.org>

Tribal Government and Native American Resources -
<http://www.usa.gov/Government/Tribal.shtml>